



New Rules Now in Effect

(These rules became effective on January 1, 2002. All registered individuals and entities are currently under legal obligation to comply with the new requirements. These rules deal with providing unsolicited gifts to clients, record keeping, renewal periods, unprofessional conduct, and individual notification requirements.)

R162-201-1. De Minimus.

An unsolicited gift, compensation, or other things of value may be given by a person transacting the business of residential mortgage loans if it is given in appreciation for having used the services of the person giving the gift, compensation, or other thing of value and it does not exceed \$50.00.

R162-202. Residential Mortgage Renewal Period.

A registration under the Utah Residential Mortgage Practices Act shall be valid for a period of two years from the date of registration.

R162-203. Residential Mortgage, Changes to registration statement.

An individual registered under the Utah Residential Mortgage Practices Act must notify the Division on the form required by the Division of any entity for which that individual shall conduct residential mortgage lending before acting on behalf of that entity.

R162-204. Residential Mortgage Record Keeping Requirements.

A person registered under the Utah Residential Mortgage Practices Act must maintain for the period set forth in Utah Code Section 61-2c-302 the following records:

- (a) Application forms;
- (b) Disclosure forms;
- (c) Truth-in-Lending forms;
- (d) Credit reports and the explanations therefor;
- (e) Conversation logs;
- (f) Verifications of employment, paycheck stubs, and tax returns;
- (g) Proof of legal residency, if applicable;

- (h) Appraisals, appraisal addenda, and records of communications between the appraiser and the registrant or lender;
- (i) Underwriter denials;
- (j) Loan approval; and
- (k) All other records required by underwriters involved with the transaction.

R162-205. Residential Mortgage, Unprofessional Conduct.

Unprofessional conduct includes the following acts:

- (a) Conducting the business of residential mortgage lending under any name other than a name under which the entity or individual conducting such business is registered with the Division;
- (b) Failing to remit to the appropriate third parties appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower;
- (c) Charging a borrower more for third party services than the actual cost of those services.



in this issue:

* Mortgage Registration Renewals	page 2
* Identity Theft	page 3
* RESPA: Notice to Borrower	page 3
* Disciplinary Sanctions	page 3
* Chaos in Lender Fees	page 4
* HUD Disciplines 55 Lenders	page 5
* Financing: Lender Liability	page 6
* Home Mortgage Insurance Program	page 7
* Words from the Chief	page 8

Mortgage Registration Renewals Approaching

It's Your Responsibility to Renew!

It has been nearly two years since the Division of Real Estate began registering mortgage lenders. This means that the renewal cycles for the initial registrations done in 2000 are beginning. At least six weeks before the expiration date, the Division will send out all of the renewal information and forms to each person or entity due to renew. If you have moved and not notified us, *please do so now* so that you will receive your renewal packet. Mailing expenses may prohibit us from resending mail that is returned by the Post Office. Utah Code Annotated 61-2c-106 outlines the requirements for addresses provided by registered mortgage lenders to the Division:

“(1) In providing an address to the division under this chapter, a physical location or street address shall be provided.



“(2) A person registered under this chapter will be considered to have received any notification that is mailed to the last address furnished to the division by the person registered under this chapter.”

In short, the Division will mail a renewal packet to the last known address you have provided, *but you are responsible to ensure that your registration is renewed* whether you receive a renewal packet or not. If you fail to do so, *your registration will lapse*, prohibiting you from engaging in the practice of residential mortgage lending until the time your registration is reinstated. Unregistered individuals or entities engaging in residential mortgage lending are subject to disciplinary action by the Division.

Please be patient and wait for your renewal packet to arrive in the mail. The forms and procedures have not yet been finalized for mortgage registration renewals (however, the renewal fee has been set at \$200). The Division does not have the renewal forms available to distribute before the six weeks in advance of your expiration date. When you do receive the packet, read and follow the instructions carefully. We will provide you with all of the information and forms needed for the renewal of your registration. Don't procrastinate sending in your renewal! The Division will be bombarded with paperwork because so many people registered initially in mid-2000. Send it in early and have the peace of mind that it will be processed before your expiration date. However, if you do wait

until the last minute, you do not need to hand-deliver your paperwork to our office – we will accept a Post Office postmark date if it is dated before the expiration of your registration (*postal meter dates are not accepted*).

Your cooperation is vital to the success of this first renewal cycle. It is a new experience for the Division as well, but we are confident that it can be smooth and efficient with your help.



Utah Real Estate Mortgage Monitor

Purpose: To provide information and education to the residential lending community which will help them be successful in competently serving Utah consumers.

Editor Mark Fagergren
Layout Jennifer Eatchel
Regular Contributors Dexter Bell
David Jones
Shelley Wismer

Mortgage Regulatory Commission:

Chairman--David C. Luna
Vice Chairman--Rod Morley
Commissioners--Barbara Soriano,
Charles C. Howard, Eva Rees

Published by the

Utah Division of Real Estate
Department of Commerce
Heber M. Wells Building
160 East 300 South (84111)
State Mail Box 146711
Salt Lake City, UT 84114-6711
(801) 530-6747

© 2002 Utah Division of Real Estate
Div. of Real Estate home page address:
<http://www.commerce.utah.gov/dre>

Identity Theft

In a recent identity theft investigation, the Utah Division of Consumer Protection became aware that suspects are obtaining personal information from dumpsters behind businesses. While this has undoubtedly been occurring for some time, it is worth noting that the particular suspects in this case were using information obtained from a mortgage company. Apparently the mortgage company failed to shred or otherwise destroy documents containing personal information of mortgage lessees. The suspects stated that the records they obtained in the dumpster had names, addresses, dates of birth, bank account information (including names of financial institutions, account numbers, and account holder information), social security numbers, residence and mortgage history, etc. This information enabled the suspects to easily obtain credit cards via the Internet, which were then used by the suspects to purchase goods and/or services.

Please be aware that this is happening frequently! You owe it to your clients to protect their information by destroying records ready to be disposed of to prevent this type of crime from continuing to expand. Certainly we would not like to see additional losses to the organizations, nor would we like to see the individuals whose information is stolen deal with this type of tragedy.



Special thanks to the Utah Division of Consumer Protection.

RESPA: Notice to Borrower When Assigning Mortgage

The Real Estate Settlement Procedures Act (RESPA) has a little-known requirement that "Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale or transfer of the servicing of the loan to any other person" (RESPA § 6(b).) A lawsuit over the meaning of the word "servicing" reached the Seventh Circuit Court of Appeals, which held that the requirement did not apply to the original lender on the facts before the court. *Daw v. Peoples Bank & Trust Co.*, 248 F.3d 1157, 2001 WL 195077 (7th Cir. 2001). The opinion will not be published in a printed volume.

Background

Ms. Daw and her then-husband purchased a home, financing it with a \$208,000 mortgage that was guaranteed by Daw's parents. A few years later, Daw and her husband defaulted on the note. Daw's parents sought a settlement with the lender, which agreed to a payment of \$191,743. The parents paid the lender that amount, and the lender assigned the note and mortgage to the parents. The parents instituted a mortgage foreclosure proceeding, but terminated the proceeding when Daw sold the real property and turned the proceeds over to her parents. At this point, Daw went after the lender, alleging its failure to give her notice of the assignment of the note to her parents.

No Notice Required

The lender did not give Daw prior notice of assignment to her parents, but it did not have to, ruled the Seventh Circuit. This was so because the lender did not sign, sell, or transfer the servicing of the loan. "Servicing" means: "Receiving any scheduled periodic payments

from a borrower pursuant to the terms of any loan . . . and making the payments of principal and interest . . . as may be required pursuant to the terms of the loan." (RESPA § 6(i)(3).) Once Daw defaulted, there were no longer payments to make or collect and thus there were no servicing rights to assign, sell, or transfer. Since the assignment to Daw's parents was not an assignment of servicing rights, the lender did not have to give Daw prior notice of it.

Reprinted with permission from the Real Estate Law Report, Volume 31, Number 2, July 2001.



Mortgage Registration Disciplinary Sanctions



FISH, JARED, Alpine. Registration issued on probationary status in light of past misdemeanor convictions. The probation will last until his first renewal.

SLATER, GENE A., Draper. Registration issued on probationary status in light of past minor misdemeanor convictions. The probation will last until his first renewal.

Researchers Find Chaos in Lender Fees

(NORTH PALM BEACH, FL) - Bankrate.com, an Internet consumer finance information site, has released a report suggesting that lenders are all over the map on what they charge consumers for essentially the same services. The Web site contends the different names and packages make it nearly impossible for consumers to compare rates.

Says Karen Christie, vice president of Bankrate.com, one lender "might advertise that it doesn't charge an 'application' fee up front, but it makes that up by charging a 'commitment' fee or 'doc prep' fee at closing.

"Other companies try to look cheaper by charging an all-inclusive 'processing' fee. But they may charge \$900, whereas a lender that itemizes might only charge \$200 as an 'application' fee, plus \$300 as a 'funding fee' and \$250 as a 'review fee' - \$750 total.

"The range of prices can be very wide, too. The underwriting fee, for example, averages \$280, but home buyers could pay as little as \$25 or as much as \$595. The fee for running a credit report ranged from \$8.50 - the price consumers pay if they buy it directly from a credit reporting agency - to \$65."

Researchers point out that it is reasonable for banks to charge fees to recover legitimate costs. It points out, however, that some lenders appear to make fees profit centers.

Says Christie, "Some lenders charge \$55 for a credit report that you could get yourself for \$12. I've seen courier fees of \$75. FedEx charges a lot less than that."

Reprinted with permission from ALQ/Real Estate Intelligence Report, Summer 2001.

Fees on Mortgages

<i>Lender/Broker Fees</i>	<i>Highest</i>	<i>Lowest</i>	<i>Average</i>
Administration fee	\$725	\$45	\$413.46
Application fee	\$410	\$100	\$266.40
Commitment fee	\$450	\$100	\$268.00
Document preparation	\$350	\$50	\$162.22
Funding fee	\$300	\$40	\$125.57
Mortgage broker fee	\$895	\$100	\$344.17
Processing	\$850	\$99	\$302.71
Tax Service	\$110	\$10	\$72.09
Underwriting	\$595	\$25	\$279.93
Wire transfer	\$335	\$10	\$55.27
<i>Third-party fees</i>			
Appraisal	\$375	\$175	\$269.31
Atty or settlement fees	\$820	\$50	\$373.71
Credit report	\$65	\$8.50	\$36.53
Flood certification	\$65	\$8.75	\$22.21
Pest & other inspection	\$400	\$30	\$86.07
Postage/courier	\$90	\$20	\$44.73
Survey	\$525	\$25	\$226.59
Title insurance	\$1,157	\$161	\$460.23
Title work (Title search, plat drawing, name search)	\$595	\$50	\$220.37
<i>Government fees</i>			
Recording fee	\$250	\$30	\$72.27
City/county/state tax stamps/intangible tax	\$1,425	\$50	\$557.50

Source: Bankrate.com

Believe it or not . . .

Mortgage lenders – do you know who you're hiring? Recently, a former Utah certified appraiser was hired by several mortgage companies and banks to perform appraisals who had no current appraisal license or certification. This went on for over a year! To avoid potential problems that could arise out of a situation like this, you can check to see whether a person is licensed or certified by accessing our on-line licensee database (www.commerce.utah.gov/dre); or the Appraisal Sub-Committee database (www.asc.gov), which lists all licensed or certified appraisers nationwide.

HUD Takes Action Against 55 Lenders

WASHINGTON – U.S. Housing and Urban Development Assistant Secretary for Housing/Federal Housing Commissioner John C. Weicher announced that HUD's Mortgagee Review Board has taken administrative action against 55 lenders in 22 states for violating federal lending regulations. The actions include withdrawing Federal Housing Administration (FHA) lending authority, and imposing sanctions ranging from indemnifications of loans to payments of almost \$3 million in fines.

"These administrative actions show that HUD is serious about protecting the American homebuyer," Weicher said. "Lenders who think about breaking the rules should take notice and understand that the consequences can be severe."

HUD's actions, published in the July 23 (2001) Federal Register, resulted from standard compliance reviews of FHA-approved lenders. HUD's four Home Ownership Centers – in Atlanta, Denver Philadelphia and Santa Ana, CA – conducted a majority of the reviews. HOCs refer the most serious violations of FHA requirements to HUD's Mortgage Review Board, established to protect the FHA insurance fund. The MRB is comprised of the Federal Housing Commissioner and six senior HUD officials.

The MRB imposed its severest penalty against Mortgage Lending of America, Inc., Huntington Station, NY, with \$533,500 in civil penalties

and a five-year withdrawal of authority to originate FHA-insured loans. Monetary fines and withdrawals of FHA authority were also imposed against:

- *Capitol Mortgage Bankers, Inc., Millersville, MD (\$280,500/5 years)
- *American Skycorp, Inc., Timonium, MD (\$220,000/5 years)
- *Assurety Mortgage Group, Inc., Decatur, GA (\$195,500/8 years)
- *Avstar Mortgage Corp., Blue Bell, PA (\$192,000/8 years)
- *National Charter Mortgage Corp., Gardena CA (\$100,000/3 years)
- *Milestone Mortgage Corp., LaPalma, CA (\$88,000/5 years)
- *Heartland Mortgage Inc., Tucson, AZ (\$33,000/3 years)
- *Morgan Home Funding corp., Rockville, MD (\$25,000/3 years)
- *Specialty Mortgage Corp., Hialeah, FL (\$8,000/3 years)
- *Whitehall Funding, Inc., Indianapolis, IN (\$5,500/5 years)

Also, the MRB immediately suspended all government business from Island Mortgage Network, Inc., Melville NY and Sunstate Mortgage (d/b/a Sun America Mortgage), Daytona Beach, FL, for not having valid state licenses.

The MRB reached settlement agreements with 38 of the 55 lenders, which included imposing \$1.3 million in civil penalties or other assessments and the indemnification of 161 loans, equivalent to about \$4.8 million in potential savings to the FHA insurance fund.

Reprinted with permission from the HUD website: www.hud.gov.



Mortgage Registration Procedures

The following information is an outline of what's required for a mortgage registration application. For in-depth and detailed information, please see the mortgage licensing information on our website: www.commerce.utah.gov/dre.

Entity Registration:

1. Application form
2. Certificate of Existence from the Utah Division of Corporations
3. Original \$25,000 surety bond
4. 2 fingerprint cards, letter of waiver, and \$39 fingerprint processing fee per control person
5. \$200 application fee

Individual Registration:

1. Application form
2. Proof of coverage on employer's bond or original \$10,000 individual surety bond
3. 2 fingerprint cards, letter of waiver, and \$39 fingerprint processing fee
4. \$200 application fee

Please be sure to **completely fill out all required forms** and sign in the appropriate places. Incomplete applications, or applications not filled out properly will not be processed. Your registration is not effective until the date that all paperwork (properly filled out) and fees are received.

Blank fingerprint cards are available through the Division of Real Estate. Most law enforcement agencies will take your fingerprints for a nominal fee.

Financing: Lender Liability for Misuse of Escrow Funds

A bank was held liable for releasing escrowed funds to a property owner contrary to the terms of escrow and for misuse of loan proceeds in the case of *National Bldg. & Contracting Co., Inc. v. Alerion Bank & Trust Co.*, 772 So.2d 938 (La.Ct. App. 2000), cert. denied, 2001 WL 263863 (La. 2001).

Background

Alerion Bank and Trust loaned \$6.5 million to Dibidale, Inc. to purchase real property and fund construction costs on the project. Dibidale hired National Building & Contracting to complete the project. When money problems began to arise, the bank asked National and Dibidale for a meeting to discuss completion of the project. Following the meeting, a three-party letter agreement was signed. The bank made a new loan of \$1.4 million to Dibidale to be used to complete the project, of which \$500,000 was deposited in escrow as a retainage fund for unpaid laborers and materialmen. The agreement provided that the \$500,000 escrowed amount could not be released by the bank absent a written agreement among Dibidale, National, the architect and the bank's inspector. Relying upon the three-party agreement, National continued to work on the project and received approximately \$602,000 for subcontractors, materialmen and labor.

However, unbeknownst to National, the bank used approximately \$288,000 of the new loan proceeds

to pay for costs other than hard construction costs. This included paying itself \$14,000 in closing costs, \$68,000 on an interim note issued by Dibidale and approximately \$170,000 for interest on the first loan. Money woes again beset the project and to ease the financial problems, National and Dibidale signed an agreement authorizing the bank to release the \$500,000 escrowed amount to pay expenses strictly for construction costs, e.g., payroll, material costs and subcontractor costs. Despite the terms of the agreement, the bank deposited the \$500,000 in Dibidale's operating account for use without restriction. When National received monies from the Dibidale operating account, it mistakenly believed that the payment came from a third-party funder and continued to work on the project. Because of the continuing cash shortage, Dibidale could not pay invoices received from National, resulting in over \$800,000 of liens against the property as National was unable to pay subcontractors and suppliers. The bank foreclosed on the project, erasing all liens. After acquiring the property, the bank sold to the owner of Dibidale an option to purchase the property. Dibidale's owner assigned the option to another corporation he owned. The property was sold, the bank was paid, Dibidale filed for bankruptcy, and National "was ruined."

Bank Liable

National sued Dibidale and the bank and obtained a judgment for over

\$1.5 million in damages. Louisiana's appellate court affirmed. The court found that the bank had breached a fiduciary duty to National by releasing to Dibidale the \$500,000 in violation of the escrow agreement. The court also found no error in the trial court's ruling that the bank and Dibidale were obligors in bad faith, and thus liable for all damages, foreseeable or not, that were a direct consequence of breaching the agreements with National. The evidence of the bank's failure to perform the agreements was clear: (1) the bank secured payment of interest on the first loan and its closing costs from the new loan intended to defray hard construction costs; (2) the bank promised it would not release the \$500,000 escrow to Dibidale unless National agreed to the release; and (3) the bank failed to inform National that the construction funds had been depleted and had assured National that \$1.4 M was dedicated to hard construction costs.

Reprinted with permission from the Real Estate Law Report, Volume 31, Number 2, July 2001.

Links of Interest:

HUD Information for Lenders:

www.hud.gov/groups/lenders.cfm

HUD Approved Appraisers:

<https://entp.hud.gov/idapp/html/apprlook.cfm>

FHA Home Mortgage Insurance Program Strong, Says Independent Study

WASHINGTON - An actuarial report issued by the accounting firm of Deloitte & Touche says the Federal Housing Administration's Mutual Mortgage Insurance Fund, that helps low- and moderate-income families become homeowners, is in its strongest financial condition since at least 1989, when the first annual independent actuarial study of the MMI Fund was conducted. The Fund's capital adequacy ratio is 3.75 percent, well above the Congressionally mandated minimum of 2.0 percent.

FHA mortgage insurance encourages mortgage companies to make loans to borrowers who might not otherwise be able to meet conventional underwriting requirements, by protecting the mortgage company against loan default.

"Homeownership in America continues to set records," said Housing and Urban Development Secretary Mel Martinez. "FHA is the federal government's largest program to promote homeownership, and this report shows that we can continue helping thousands of families to realize the American dream."

Martinez noted that the capital ratio increased even though the economy has been in a recession. "Housing has been the strongest sector of the economy, and has helped to moderate the economic problems of the last year," he said. He cautioned, however, that FHA claims typically are highest in the early stages of an economic recovery.

The Deloitte & Touche study also reported that the economic value of the MMI Fund rose to \$18.5 billion, an increase of \$1.5 billion from fiscal year 2000. The economic value of the fund is defined as the sum of existing capital plus the present value of current insurance in force.

"This new study shows that FHA is working for America's families," Martinez said. "Very few programs can say they help millions of families realize the American dream without costing taxpayers a penny."

FHA does not make mortgage loans directly, but rather insures loans made by private lenders to homebuyers. The program is sustained entirely by borrower premiums. Since 1934 it has enabled almost 30 million American families who would otherwise be locked out of the mortgage market and homeownership to qualify for mortgages.

FHA now insures more than 6.6 million single-family mortgage loans with a total value of \$499 billion. When homeowners fail to make payments on mortgages insured by FHA, the agency first tries to help them stay in their homes through foreclosure avoidance. If this is not successful, the lender forecloses on a home and conveys it to FHA in exchange for FHA payment of the outstanding mortgage balance. FHA then puts the home up for sale.

FHA-insured loans also benefit homebuyers in these ways:

- FHA downpayments of three percent are lower than the minimum that many lenders require for non-FHA mortgages. Higher downpayments are a major roadblock to homeownership.
- FHA's requirement for homebuyer credit ratings are more flexible than those set by many lenders for non-FHA borrowers.
- FHA permits a borrower to carry more debt than a private mortgage insurer typically allows.

Reprinted with permission from the HUD website: www.hud.gov.



Department of Commerce
Division of Real Estate
Box 146711
Salt Lake City, UT 84114-6711

Distribution: Kindly Circulate and Post

Presorted Standard
U.S. Postage
PAID
SLC, Utah
Permit No. 4621

Words from the Chief . . .

by Real Estate Division Chief Investigator, Jon R. Brown

Question: Can an appraiser who has prepared an appraisal report for a lender re-certify the report to a different lender, or just do a complete new report if the borrower wants to change lenders?

Answer: NO. The federal and state standards governing appraiser conduct, called USPAP (pronounced “use-pap”) state that an appraiser may not communicate the appraisal results to anyone other than the client and people the client specifically authorizes to receive the results.

The URAR Appraisal Report Form asks for the client’s name. In most cases the client is the lender, not the borrower, so a duty of confidentiality is owed to the lender whose name is on the Appraisal Report as the client. Even if the lender turned the borrower down, the appraiser is not released from the confidentiality owed to the lender. USPAP states that time alone doesn’t determine when the relationship ended. The client relationship lasts until the intended purpose of the assignment has been accomplished. Therefore, even if the loan was declined, it would still require a letter of authorization from the client releasing the appraiser, to do an appraisal report for a new lender. But even with that, the appraiser would not be authorized to update the original report. USPAP states

that none of the parties in the original report can change if an update is done, so the first report needs to be treated as one report and the records kept for it in its report file, the second report is not part of the first report, and will require its own file and records. In short, it is not like a failed real estate sale. An appraisal assignment is completed even if the loan is not made, and the appraiser is required to treat it as any other completed assignment.

Question: Can a mortgage company withhold payment to the appraiser if the value hoped for by the lender, buyer, or seller is not met?

Answer: NO! One of the ten prohibited acts in the Utah Residential mortgage Practices Act is that a lender or broker will not attempt to induce an appraiser to reach a value. There are too many ways to induce, none more powerful than to withhold the appraiser’s fee. Therefore, to avoid a complaint against a lender, do not withhold fees because the value reached by the appraiser is not high enough to make the deal close. The appraiser is not allowed to accept an assignment that calls for a predetermined opinion or conclusion. Even the threat of removing the appraiser from an approved list or withholding future assignments could be construed as an attempt to induce. Stay away from this type of conduct.